

AAMB Southern Chapter
May 9, 2006

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Superintendent
Arizona Department of Financial
Institutions

Arizona Department of Financial Institutions

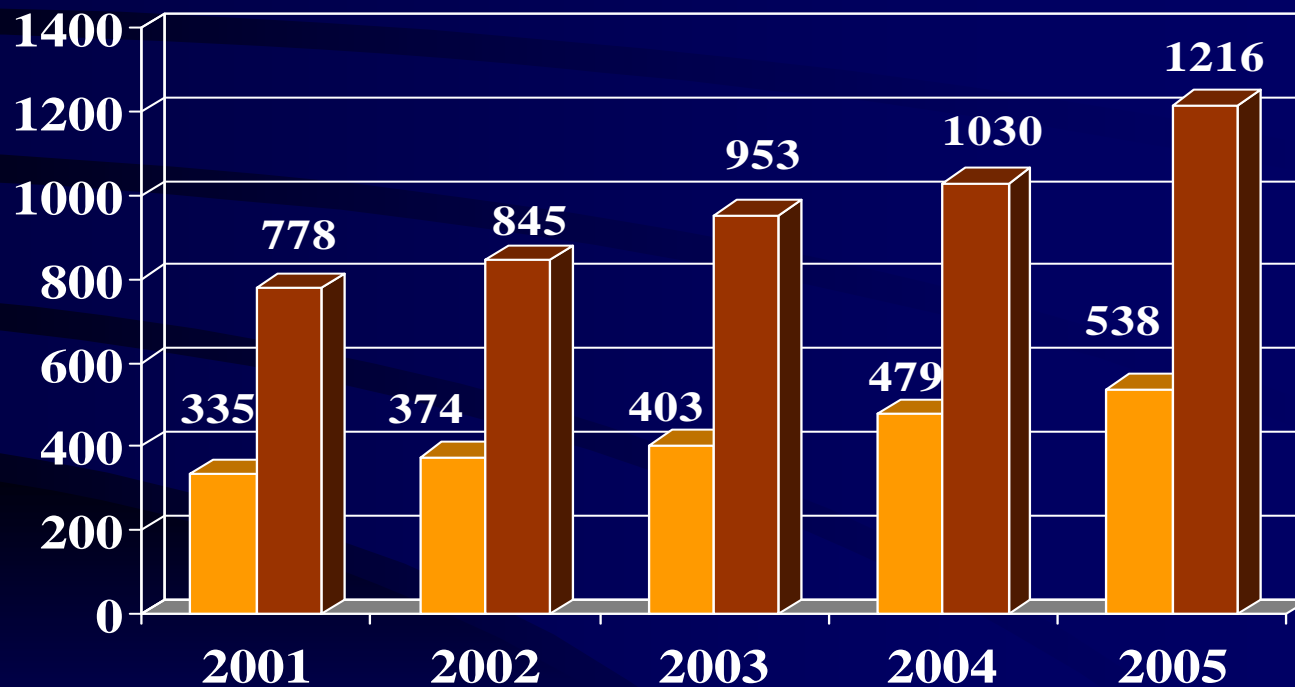
- **Mortgage Broker and Banker Growth**
- **Common Complaints**
 - Solicitation Letters
 - Net Branching
 - Affiliated Business Arrangements
- **Common Examination Findings**
- **Trends**

Arizona Department of Financial Institutions

Licensing

Home Offices

■ Mortgage Banker (BK) ■ Mortgage Broker (MB)



Yearly Average Increase:

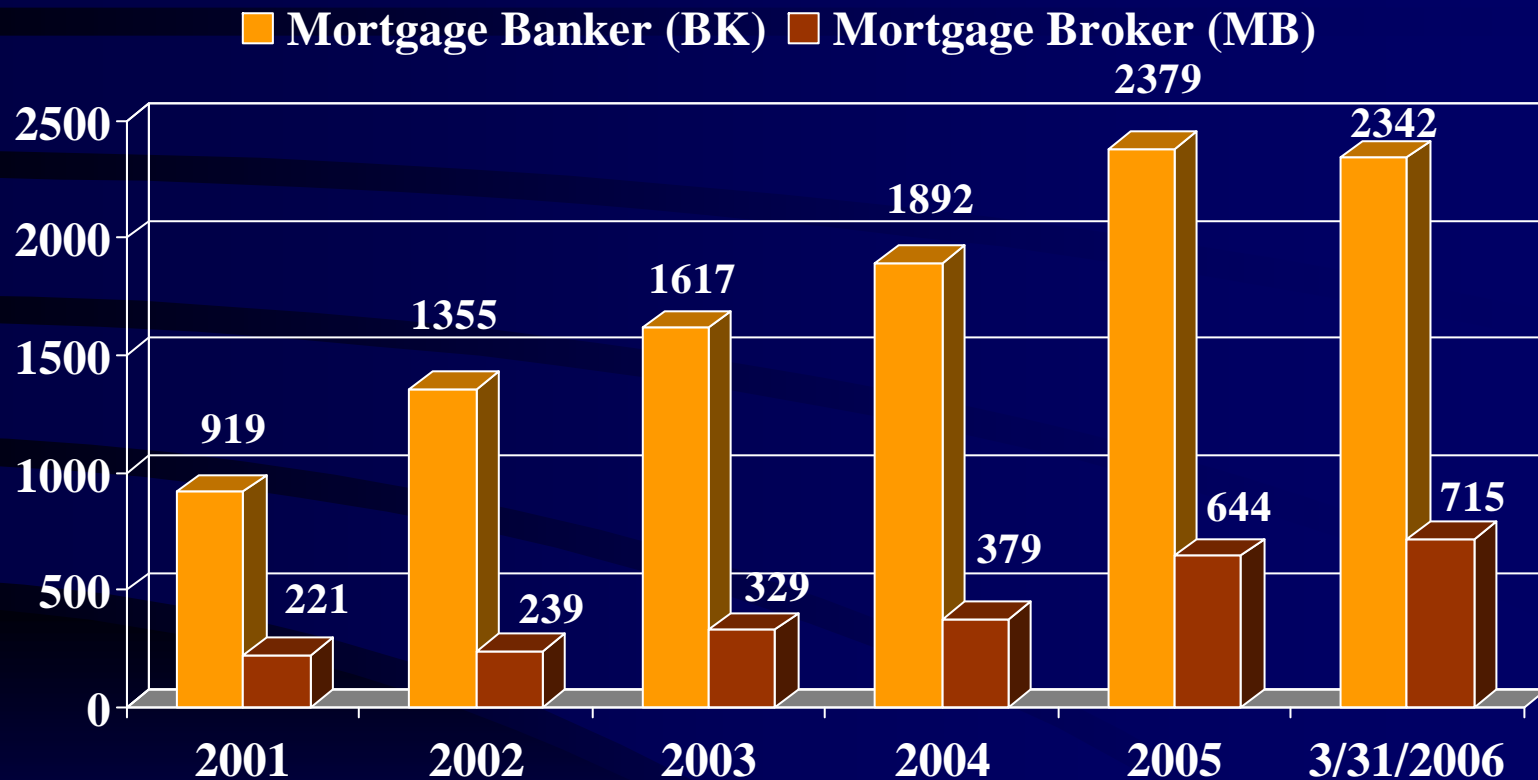
Mortgage Banker 13%

Mortgage Broker 12%

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Licensing

Branches



Yearly Average Increase:

Mortgage Banker 26%

Mortgage Broker 34%

Total Home Offices/Branches:

12/31/2001

2253

03/31/2006

4911

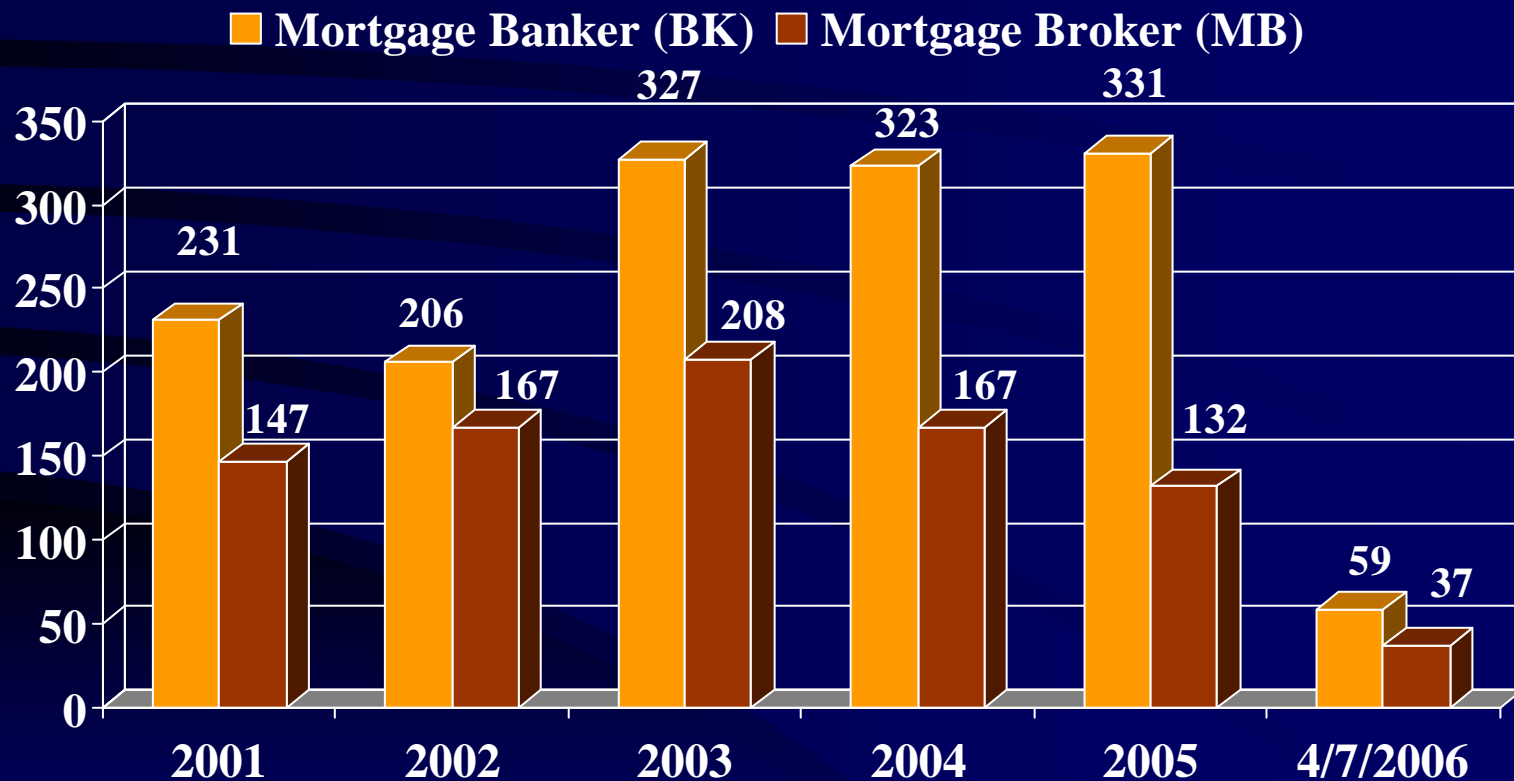
Arizona Department of Financial Institutions
License Count as of May 3, 2006

- | | |
|--------------------|---------|
| • Mortgage Brokers | • 1,329 |
| • Broker Branches | • 752 |
| • Mortgage Bankers | • 568 |
| • Banker Branches | • 2,365 |

Arizona Department of Financial Institutions

Consumer Affairs

Number of Complaints Closed



The Department is currently reviewing 127 mortgage lending complaints

Arizona Department of Financial Institutions

Consumer Affairs

Sample Mortgage Solicitation

MIP Refund Notice

The United States Department of Housing and Urban Development (HUD) has a positive balance in the prepaid FHA Mortgage Insurance Premium (MIP)* account of FHA borrowers who originated an FHA loan in the years <<Year1>> through <<Year2>>. Most individuals who paid this Mortgage Insurance Premium are eligible for a refund, either in cash or applied toward a new FHA loan at a better interest rate, without having to completely re-qualify for a new loan.

This is not a mandated refund and the refund process will only be initiated under the direction of the homeowner.

Note: When calling, please have the following information available: File number, property address, monthly payment amount and interest rate.

*MIP is a prepaid insurance used to protect lenders from borrower default. Each month a portion of the MIP is released from a holding account.

What's misleading about the "Refund" Solicitation Letter

- Leaves the impression that the sender is a government agency administering a refund program
- Misleads the recipients into believing that they are just a phone call away from receiving a refund
- Does not state that the only way to get the refund is to refinance your home
- Does not disclose or clearly disclose that the sender is a mortgage company soliciting a loan

Net Branching in Arizona is Prohibited

REGULATORY ALERT*

BK-06-01

Issued February 8, 2006

**“Transfer or Assignment of Your Mortgage Banker or
Broker License”**

**A.R.S. §§ 6-903(O) and 6-944(A) state, in pertinent part, that
a mortgage broker license and a mortgage banker license
are “not transferable or assignable.”**

***(Abbreviated version...full version located at www.azdfi.gov)**

Net Branching Regulatory Alert

Reminder: The Department may impose of a civil money penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

A Short SAMPLE of “Don'ts”

- DON'T transfer or assign your mortgage broker or banker license to “branch managers” or “owners.”
- DON'T require branch managers to pay for branch start up costs, including, but not limited to, the cost of branch office licenses, bank account deposits, background checks, accounting fees, HUD license fees, security deposits, training, payroll fees, and loan software fees.
- DON'T require branch managers to sign agreements to pay monthly fees for using your license.

Net Branching Regulatory Alert

- **DON'T** fail to assume responsibility and liability for branch office leases and equipment leases that are rightfully your responsibility. You or your designated officers should sign rent and equipment leases, not branch managers.
- **DON'T** fail to assume the responsibility and liability for utilities, office supplies, appraisals, alarm equipment, and any other bills incurred by branches.
 - Bills, utilities, and invoices should be in licensee's name.

Net Branching Regulatory Alert

- **DON'T** fail to maintain physical access to your branches at all times.
- Visit www.hudclips.org and click on “Access HUD Letters and Notices from past years” to read, among other things, Mortgagee Letter 00-15, which addresses “Prohibited Branch Arrangements.”

Affiliated Business Arrangements ("ABAs")

- In general, ABAs are arrangements between home builders/developers and their affiliates (mortgage companies, title companies, and the like) with consumers/borrowers.
- They were created to provide consumers with a "one-stop-shopping" experience. RESPA, Section 8, and the rules promulgated under it, govern the compliance of ABAs.

Affiliated Business Arrangements: Jurisdiction

- Seller/Developer
- Real Estate Agent
- Buyer
- Affiliated Broker
- RESPA
- Fair Trade Practices
- Anti-Trust
- Real Estate Dept.
- Real Estate Dept.
- Signed a Contract
- Dept. Fin. Institutions
- HUD/DFI
- AZ Attorney General
- AZ Attorney General

Affiliated Business Arrangements

Consumer Complaints

- **The borrower/buyer is prohibited or restricted from using an outside lender who can provide a better loan rate and/or better loan terms**

Affiliated Business Arrangements

Consumer Complaints

- **The builder/seller threatens to cancel the contract unless the borrower/buyer uses their affiliate**
- **Borrowers complain that their earnest money deposit is then kept by the builder as a form of "liquidated damages" and the "incentive" disappears along with the contract, all for breach of contract**

Affiliated Business Arrangements

- What we need from the complainants:
 - A very detailed written chronology of the events;
 - The entire purchase contract;
 - Names of all the people involved;
 - The developer/builder name and any agent names;
 - Who said what to who; and
 - The extent of interaction/intermingling between all of the “affiliates.”

What is DFI Doing?

- We receive ABA complaints. We are compiling all of the necessary and pertinent information (contracts, purchase agreements, etc...). **This investigation is in its infancy.** We are working with other Arizona state agencies (Real Estate, Housing, and the AG) and the Department of Housing and Urban Development to determine the legality of these arrangements.

Common examination issues in Arizona

- **Buying leads from unlicensed independent contractors**
- **Paying loan officers on a 1099 basis**
- **Change of Control without prior approval**
- **Unlicensed branches**
- **Late or no payment to appraiser**
- **Employee Investigations not completed and not documented**
- **Incomplete fee agreement between lender and borrower**

Examination Results

- **Report of examination with no or minimal violations**
- **Notice of Assessment (NOA) with Civil Money Penalty**
 - May request a hearing or consent
- **Cease and Desist (C&D) with Civil Money Penalty**
 - May request a hearing or consent
- **Notice of Hearing**
 - Any remedy necessary including revocation or suspension of the license
 - Civil money penalty

Trends

- Electronic Licensing of Mortgage Brokers and Bankers – CSBS Mortgage Project
- Loan Originator Licensing – not yet in Arizona
- Regulatory Enforcement Unit
- Examinations based upon complaints – putting out fires
- Real Estate Fraud/Loan Fraud – partnering with other agencies to conserve and utilize resources
- Affiliated Business Arrangements – data gathering, research and partnering with other state and federal agencies
- Resources

Questions?

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